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Your Ref:

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Our Ref: SCL/LO

23<sup>rd</sup> May 2005

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Dear Sir,

**CONSULTATION ON THE SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT  
2005  
PROHIBITION OF SMOKING IN CERTAIN PREMISES REGULATIONS 2005**

Please find enclosed the joint response to the above consultation from Dumfries and Galloway Council's Environmental Health Service and the NHS Dumfries and Galloway.

In making this response we would like to reaffirm our support to the draft Act and Regulations.

Should you have any queries or wish to discuss any of the observations made please do not hesitate to contact me at the above telephone number.

Yours sincerely,



S. Lindsay,  
Environmental Health Officer (HQ).

Enc.

Divisional Environmental Health Officer (HQ)  
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***A Joint Response from Dumfries and Galloway Council  
(Environmental Health) and NHS Dumfries and Galloway***

***THE SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005  
(PROHIBITION OF SMOKING IN CERTAIN PREMISES) REGULATIONS  
2005: DRAFT***

**We fully support these Draft Regulations and would like to add the following comments on the detail outlined within the consultation.**

***Annex B***

***Q1. Do the definitions of words and phrases ensure clarity of what premises are covered or exempted from the regulations? If not, how might they be improved?***

There are a number of premises where clarity of the definition is needed or to be added;

- Construction sites
- Stalls etc – as many are not enclosed totally this needs clarifying further
- Marquees – where walls can be removed – further clarity needed on how to deal with these.
- Sports stadia – where there is a certain amount of enclosure but not total, this needs further clarification.
- When the prohibition is introduced, there is concern that tobacco manufacturers may try to increase marketing of non-tobacco (herbal) cigarettes as a way of circumventing the ban. This is an important loophole as such products may contain many toxins and carcinogens. We recommend that the legislation is drafted to specifically prohibit the smoking of tobacco or any other product.

***Q2. Views are invited on this approach.***

The signs should be displayed at all times and in a manner that is visible to all who enter the premises whether staff, customers or visitors. Further guidance is needed on where signs should be placed and are they needed at every exterior entrance. (Some establishments have a multitude of entrances and exits!)

There is no mention of the maximum fine applicable or indeed the piece of legislation to which this applies contained within the body of the sign. These items give more credence to the signage.

***Q3. Your comments are invited on the existing formula and on how it might be improved.***

Market stalls - these are not necessarily enclosed on all 4 sides but because of their low canopies would concentrate the effects of environmental tobacco smoke.

***A Joint Response from Dumfries and Galloway Council  
(Environmental Health) and NHS Dumfries and Galloway***

Crown Premises do not appear to be included and fully defined eg, service barracks, courts, and crown premises where civilians have their main place of work etc.

Construction sites do not appear but need to be addressed. It is acceptable to see an exemption when the work is solely outside, however when construction work migrates into the structure the environment changes and with it the effects of environmental tobacco smoke.

***Q4. Views are invited on the level of fixed penalties and time limits for payment.***

Through the amount of publicity, the general public, employees and employers will be quite clear that smoking in enclosed places is banned, so signs will only act as a subtle reminder. Therefore the level of fine for failure to display the signs should be reduced accordingly to a suggested level of £100 (this makes it still viable to recover in the case of non payment).

However the actual act of smoking and allowing smoking should be treated in a more serious way and fined accordingly. The fine for the act of smoking should be raised to a minimum of £100, again making it a viable fine to recover.

The fine for permitting others to smoke should be set at a slightly higher-level £250 with the discount being £200.

The discounted amount for swift payment is commendable if it encourages swift payment and prevents further legal and costly work.

NHS response - We consider that the fixed penalties seem to be set too low and therefore would not act as a meaningful deterrent – we recommend that the fixed penalty for the smoker is set at £100. And £200 for allowing a smoker to smoke in the premises. We also consider that a fixed penalty of £200 should remain for not displaying appropriate signage.

***Q5. Views are invited on the general approach outlined here.***

We support the idea that councils should submit annual statement of accounts to Ministers

***Q6. Your views are sought on whether there are any premises which fall into the definition of no-smoking premises at section 4(4) of the Bill [(a)-(d) above], but which have been omitted from the list in Schedule 1.***

- Market stalls - these are not necessarily enclosed on all 4 sides but because of their low canopies would concentrate the effects of environmental tobacco smoke

***A Joint Response from Dumfries and Galloway Council  
(Environmental Health) and NHS Dumfries and Galloway***

- Crown Premises do not appear to be included, service barracks, courts, etc
- Construction sites do not appear but need to be addressed, it is acceptable to see an exemption when the work is solely outside, however when construction work migrates into the structure the environment changes and with it the effects of environmental tobacco smoke.
- The NHS is a key setting for tobacco control as it has to treat many people with a disease that has developed or worsened due to smoking. A stay in hospital can be a key opportunity for a smoker to try quitting. In addition, NHS staff have a crucial exemplar role in demonstrating non-smoking. We recommend therefore that the regulations on NHS premises are toughened to include the grounds as well as enclosed buildings.

***Q7. Your views are invited on: (Adult Care Homes)***

- ***: The general merits of this approach*** – in essence we accept that this may well be the resident's only home and as such consideration needs to be given to that person being allowed to smoke at least in a designated room that has proper measures put in place to minimise Environmental Tobacco smoke
- ***The development of smoking policies for residential care homes*** – there is a need to work towards minimising risk for staff in this setting whilst also taking a humanitarian approach for residents. Therefore guidance and even a template smoking policy needs to be formulated to assist these premises if they so choose to allow a degree of smoking, however the policies will need to take account of occupational health for those members of staff who do have to go into the smoking room. We propose that the smoking room be provided for the short term only and that the organisation work to becoming totally smoke free (indoors) by a certain date. The rationale as to why smoking in the bedroom is not considered appropriate (i.e. on fire risk grounds) should be stated. Proper measures should be put in place to minimise Environmental Tobacco smoke in designated smoking rooms.
- ***The targeting of cessation services on these groups*** - Targeted work is required in this setting in training for staff in smoking cessation and tobacco awareness. We do not think that services should be targeted inappropriately and that any work that is undertaken should be done in consultation with representation from the Care Homes, NHS and Council.

***Q8. Views are invited on: (Psychiatric hospitals/Units)***

- ***The general merits of this approach*** - here the scenario is slightly different and more intense. Due regards therefore must be given to the

***A Joint Response from Dumfries and Galloway Council (Environmental Health) and NHS Dumfries and Galloway***

ETS exposure to both staff and patients and to this end strong guidance must be given on how this can be dealt with i.e. segregation, and has proper measures put in place to minimise Environmental Tobacco smoke

- ***The targeting of cessation services at this group*** – We would fully support further work in Psychiatric units or hospitals. We would also recommend that this work is undertaken in partnership with staff, smoking cessation services and patients. We do not think the recommendation goes far enough to protect staff from the effects of ETS in this setting. We therefore consider that dedicated resources should be allocated to develop tobacco awareness and smoking cessation with staff groups initially. We also consider that there needs to be wider tobacco awareness work undertaken in the community so that when patients are referred into the acute setting there is an awareness of what non smoking policies exist in this setting. We consider that a smoking room be allocated for smokers in the short term only and that a planned approach to becoming smoke free by a certain date is recommended.

***Q9. Views are invited on the merits of this approach. (Hotel B&B etc)***

- This seems a valid way forward so long as those rooms used by smokers are only used by smokers and non smokers are not forced to use these rooms without their consent, this is due to the build up of the chemicals in the air and the length of time needed for them to dissipate. Consideration also needs to be given to staff who service these rooms. In the premise's Health and Safety policy, there needs to be guidance i.e. opening all windows whilst in the room etc.

***Q10. Are there any premises which, taking into account humanitarian, practical or other considerations, are omitted from the exemptions list in Schedule 2?***

- We consider that prisons should be considered on similar humanitarian grounds as Adult Care homes and Psychiatric hospitals– as they are or become places of residence. However this issue gives issues for both staff and inmates, there is a fine line here between allowing smoking on humanitarian grounds and the issue of Environmental Tobacco smoke and occupational exposure to other inmates and staff. Smoking in the cells would cause issue when space is at a premium and it would be inhumane to place a non smoker in a smokers room where they were allowed to smoke during times of confinement Therefore we recommend a similar approach in that a designated smoke area be allocated in prisons, along with suitable guidance and cessation programmes, available to both staff and inmates. We think that this approach should be consistent with all other areas where the premises becomes a place of residence

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Since we are considering the effects not just of smoking, but environmental tobacco smoke and occupational exposure, the more we restrict this list of exemptions the more impact this set of legislative control will have in “de-normalising” smoking in public places and there will ultimately be a greater benefit to all.